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Supreme Court of the United States

No.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No.....

DEERE & COMPANY,

Petitioner,

vs.

JOHN W. ENGLAND,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

Petitioner, Deere & Company, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in the above-entitled action on November 28, 1960.

THE OPINIONS BELOW.

The Opinion of the United States District Court for the Southern District of Illinois, Northern Division, printed in Appendix to Brief for Defendant-Appellant (DA* 92-110), is reported, 182 Fed. Supp. 133, and the Opinion of the

*DA is abbreviation for Appendix to Brief for Defendant-Appellant, copy of which is being filed herewith.

United States Court of Appeals for the Seventh Circuit, reprinted on Pages 21-28 of the Appendix to this Petition (abbreviation "App."), is reported, 127 U. S. P. Q. 442. Petition for Rehearing was filed on December 13, 1960, and said Petition was denied on January 18, 1961.

JURISDICTION.

The Judgment of the United States Court of Appeals for the Seventh Circuit was entered on November 28, 1960. The jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1). Federal jurisdiction of the action is based on 28 U. S. C. Section 1338, it being an action arising under the Patent Laws of the United States.

STATEMENT OF QUESTIONS FOR REVIEW.

1. Can a patentee, desiring narrower claims by reissue, avoid admission that he was claiming more than he had a right to claim in the original patent by making superfluous insertions in the specification in alleged correction of defects there?

2. Twine holders of the prior art comprise one, two or three flat elements for cooperation with a pair of parallel twine entraining disks; of the two-element type, some have their outer longitudinal edges solidly bridged and some have them completely separated; of the three element type, the prior art holders have their elements bridged. Is it patentable to omit the bridge from the three-element type, leaving the longitudinal edges of the elements completely separated as in the two-element type?

STATUTES INVOLVED.

The pertinent statutory provisions are printed in the Appendix annexed hereto, Pages 19-20. They are U. S. Code, Title 35, Section 251, Reissue of Defective Patents, and Section 252, Effect of Reissue.

STATEMENT OF THE CASE.

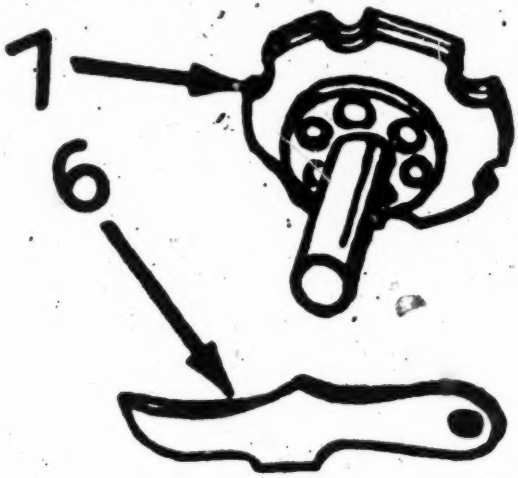
Facts re Questions No. 1 and 2.

The patent in suit, England Reissue Patent 23,927 (DA 119), relates to a "Twine Holder," and the first three paragraphs of its specification are as follows:

> "This invention relates to a twine holder and particularly to an improved device for retaining the twine within the twine entraining disk of knotting devices.
>
> In the utilization of knot tying devices on such devices as reapers and haybalers, etc., it is customary to retain the cord or twine with which the bales or bundles are tied up in a twine entraining rotary disk in which a spring fastened finger assists in holding the cord or twine in the entraining disk. In heavy application, particularly in balers, difficulty is had because of the twine pulling out of the entraining disks, leaving loose bales when the same are dropped on the field.
>
> The present invention provides a twine holder for cooperation with the twine engaging disk of the usual knotting device having sufficient twine engaging surface to prevent disengagement of the twine from the twine entraining disk. This is accomplished by providing, in addition to the usual central twine holding finger, a plurality of laterally spaced fingers extending over the outer circumference of the twine engaging disk so as to provide a plurality of twine engaging surfaces on the inner and outer sides of the twine engaging disk."

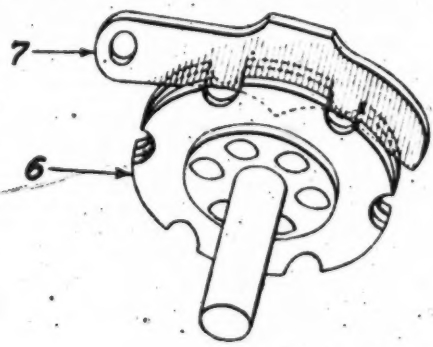
For many years, it was common, in grain reapers and corn binders, to use the two disks with just a single finger between them, Deere & Company, defendant, itself going back to 1911 in such use (DA 59).

The following drawing shows, somewhat crudely, the pair of such disks (7) and the single finger (6) for insertion between them:



This drawing is a reproduction of drawings on Page 108 of defendant's 1951 operating manual (Defendant's Exhibit 9) for its corn binders (DA 61). Defendant's Exhibit 8 is one of these holders (DA 59, 60).

The following drawing shows how these parts go together and are mounted for operation:



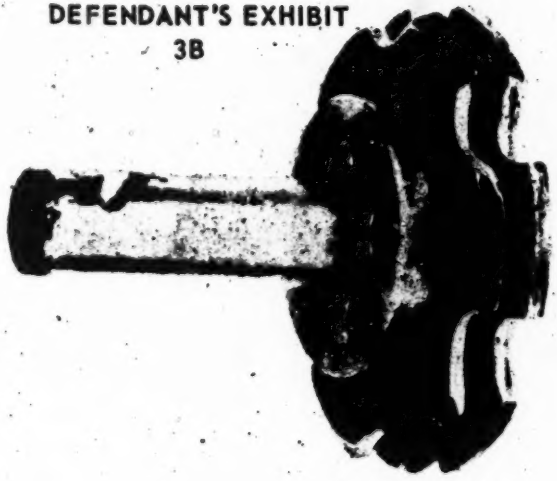
In the earlier days, hay was baled with wire, using an utterly different mechanism for joining the ends of the wire lengths surrounding the bales.

Later, when twine was attempted for use in such baling, the same type of tying mechanism as in grain reapers and corn binders was employed, and International Harvester Company, Chicago, employed a holder with an extra finger to engage one of the disks on its outside. The following are reproductions of photographs of Defendant's Exhibit 3A, the holder, and Defendant's Exhibit 3B, the associated disks:

DEFENDANT'S EXHIBIT
3A



DEFENDANT'S EXHIBIT
3B



The International Harvester Company used these holders on its 50T baler which it manufactured and sold from 1944 to 1952 inclusive.

Another large agricultural implement manufacturer, the New Holland Machine Division of the Sperry Corporation of New Holland, Pennsylvania, adopted a similar two-finger holder on its twine tie balers in 1948, and it is still using them. The following is a photograph of Defendant's Exhibit 5G, which is one of these holders:

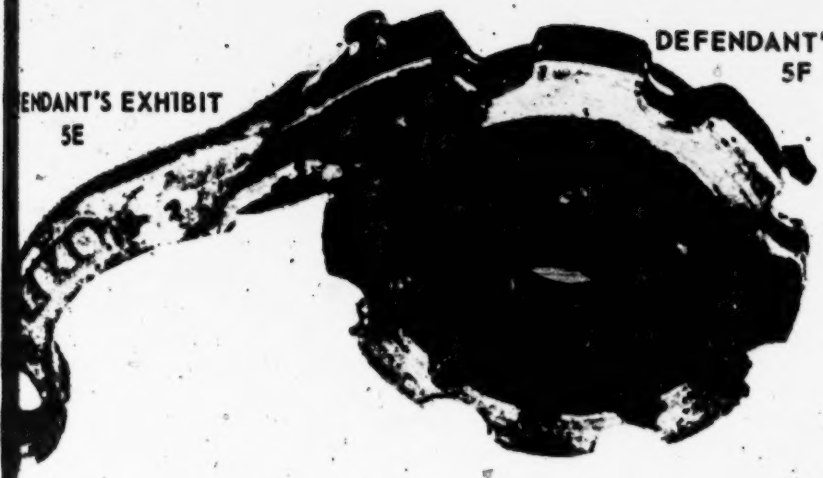
DEFENDANT'S EXHIBIT
5G



Massey-Harris Company, now Massey-Ferguson, Inc., of Racine, Wisconsin, another sizable agricultural implement company, manufactured and sold its Model No. 6 Corn Binder, in substantial quantities, in the years 1935-1945, with twine holders such as shown in the following photograph of Defendant's Exhibit 5E. This is a triple element holder in which the holder elements are bridged, cooperating with the disks as shown in the following photographs:

DEFENDANT'S EXHIBIT
5E





Mr. England, the plaintiff here, a farmer doing hay baling on his own farm and also doing custom baling, had International Harvester 50T balers, purchasing his first in 1947 or 1948 and a second in 1950. In endeavor for tighter bales for himself and his customers, he tried various adjustments and improvised changes until, in August 1950, he thought to add, to the International Harvester two-finger holder, a third finger, and that gave improved results in that regard (DA 16-20).

The following year, October 15, 1951, Mr. England applied for patent. The prosecution of the application will be treated in the following section, based on the exhibit Patent Office file history. The application, as amended, was allowed, and the patent went to issue (No. 2,594,140) on April 22, 1952, with six claims.

Defendant, Deere & Company, began its development of a twine-tie baler at its product development department, in Moline, Illinois, prior to 1953. In 1953, it was transferred to the Ottumwa (Iowa) plant for production engineering. Proposing to use a three element twine holder, Ottumwa consulted the patent department at Moline, and that department (in charge of Mr. C. T. Parker, General Patent

Attorney for Deere), upon investigation and finding said England Patent No. 2,594,140, reported back that, in its opinion, the patent was invalid (DA 61-63).

Deere began sale of twine-tie (14-T) balers June 1, 1954 (DA 13), and, on June 2, 1954, Mr. Parker wrote to Mr. England (first letter of Defendant's Exhibit H) as follows:

> "Our engineers at Ottumwa tell us that you have notified them that your patent, No. 2,594,140, dated April 22, 1952 is infringed by the twine holder furnished on our No. 14T baler.
>
> We carefully studied your patent before our factory went into production on these holders and found that you are not the first inventor of the triple blade holder working with a double disk. The idea is disclosed in two Cooley patents, No. 345,674 dated July 20, 1886 and No. 352,081 dated Nov. 2, 1886.
>
> In view of these old patents, any claims of your patent that we might infringe are invalid. For this reason we and all other manufacturers are free to use the triple blade twine holder without liability.
>
> If, after studying these Cooley patents, you disagree with our opinion, please feel free to let us know wherein we differ."

On June 29, Mr. Mason, attorney for Mr. England, wrote Mr. Parker contending that the holding elements of the Cooley patent were "ribs," "not fingers" (second letter of Defendant's Exhibit H), and inviting reply. Mr. Parker replied on July 2, fully and thus promptly in explanation of his position (third letter of Defendant's Exhibit H): there was no reply from Mr. Mason.

And Deere continued its manufacture and sale of its 14-T baler.

On January 18, 1955 the Reissue Patent 23,927 (the patent in suit) issued, revealing that application therefor had been applied for, with added narrowed claims, on Septem-

ber 23, 1954. The prosecution of that application will be treated in the following section, based on the exhibit Patent Office file history.

On March 28, 1955, other attorneys for Mr. England opened the subject of that patent with Deere's Mr. Parker, proposing a meeting looking toward a settlement, and further correspondence ensued (Defendant's Exhibit H); but nothing came of that, as the letters show, and the Complaint was filed November 28, 1956.

The pleadings included counterclaim by defendant for affirmative relief on the ground of invalidity of the patent in suit, depositions were taken, stipulations of fact and for procedure were entered into, and the case went to trial in April 1959; briefs were filed, oral argument was had, and the Opinion and Judgment of the District Court (DA 92-110) were handed down March 28, 1960, finding the cited patent claims valid and infringed; and formal Judgment was entered April 18, 1960 (DA 111-112), on which day Notice of Appeal was filed (DA 113) by defendant.

The formalities in the Court of Appeals were duly complied with, briefs and appendices were filed, including reply brief by defendant-appellant, the case went to hearing on October 19, 1960, and the Court of Appeals handed down its Opinion and affirming Judgment on November 28, 1960 (App. 21-28); Petition for Rehearing was filed by defendant-appellant on December 13, 1960; plaintiff-appellee filed Answer to Petition for Rehearing on December 27, 1960; and defendant-appellant's Petition for Rehearing was denied on January 18, 1961; defendant-appellant petitioned for stay of mandate on January 20, 1961, and stay of thirty (30) days from January 18, 1961, was granted on January 25, 1961.

REASONS FOR THE ALLOWANCE OF THE WRIT.

Whenever it is a reissue patent that is the basis for a patent infringement suit, the reason for the reissue, under the exacting limitations of the statute, is of fundamental and substantive concern, and this is specially so where the defendant was previously accused under the original patent.

The instant case involves what petitioner contends is a misuse by respondent of the reissue patent statute (35 U. S. C. Sec. 251), now standing approved in the instant case by the Courts below, and also the application, by the Courts below, of criteria of invention in conflict with applicable decisions of this Court.

In treating these subjects here, we predicate what we have to say on the preceding Statement of the Case, the Patent Office file histories of the two England patent applications, including the two patents themselves (DA 115-122), and the Opinions and Judgments of the Courts below, those of the District Court at DA 92-110 and that of the Court of Appeals being reprinted on Pages 21-28 of the Appendix to this Petition.

It is significant that, although the International Harvester two-finger holder was Mr. England's direct and immediate prior art, *there is no mention of it in his patent specification.* Rather, he leaves it as if he were the first to pluralize holder elements, as follows (Patent in suit, Col. 1, lines 72-78):

> "It has heretofore been customary to use a twine holder having a single finger received in the space between the entraining wheels 16 and 18. The present invention provides a twine holder arm 30 having a plurality of fingers including a central finger 32 which passes between or is received in the space be-

tween the entraining wheels 16 and 18 for the customary purpose of forcing the twine down in and between the disks where it is frictionally held."

Reference is made to Defendant's Exhibit 6B, the file wrapper and contents of England Patent 2,594,140, of which Page 6 contains the four claims originally filed, and Page 16 contains the Examiner's action thereon, Claims 1, 2 and 3 "as obviously fully met by the disclosure in Hornsby *et al.* See Fig. 17" and Claim 4 "as unpatentable over the disclosure in Hornsby *et al.*"

That is the Hornsby British Patent 11,419 of 1888, which shows disks and holders of various kinds, and its Figure 17 shows a holder such as the Massey Harris holder just above referred to. Incidentally, this is also substantially the same as the holders of the Cooley patents which Mr. Parker cited to Mr. England.

In the amendment paper in response (Pages 17-20 of the exhibit), the applicant deleted Claim 1, and we quote it here:

> "1. A twine holder for a tying machine having a pair of step by step twine engaging disks, a twine holder having a presser finger entering between said disks and a pair of fingers mounted in spaced parallel relation to said presser finger, said pair of fingers embracing the outer sides of said twine engaging disks."

The applicant thus acknowledged that "finger" does not alone distinguish from the Hornsby Figure 17 holder.

The amendment substitutes a claim which became Claim 4 of the patent (one of the three original patent claims in issue here). That claim characterizes the fingers as "plate-like" and adds a further limitation, which incidentally is also shown by Hornsby. No function in omitting the bridge is either taught by the England specifica-

tion or asserted in the Remarks attending the amendment. If "plate-like" is to mean anything, the same would, of course, apply to the International Harvester and the New Holland holders, but they were not of record in the Patent Office.

Claims 2 and 3 of the application were amended and became Claims 1 and 2 of the patent (the other two original patent claims in issue here). Claim 1 states that the fingers are "plate-like."

It is appropriate here to refer to the holdings of the Courts below to the effect that the International Harvester and the New Holland two-finger holders were cited to the Examiner.

They did not hold that they were cited to the Examiner during the pendency of the original England application, but did so hold in regard to the application for reissue, this on the ground that the attorneys for England had filed a piece of his advertising matter listing a number of balers on which his holders could be used. This piece of advertising matter is shown at the lower right hand corner of Page 66 of plaintiff's Appendix, and it will be seen that International 50T and New Holland balers are listed, but there is nothing whatever there about their factory-installed twine holders. Yet the District Court, who regarded the International Harvester holder as "the device which most closely anticipates plaintiff's claimed invention" (DA 103) said (DA 108) that the Mr. England's patent

> "was issued to him by the Examiner over the teachings of the pertinent prior art references, and over the prior usage by International Harvester and New Holland which were cited to the Examiner."

On this subject, the Court of Appeals said (App. 27):

> "Defendant lays much emphasis on its argument that the prior usage of two-finger holders by Interna-

tional Harvester and New Holland were not before the examiner. The trial court found to the contrary. The record shows that in Paper No. 3 of the Reissue Patent, the examiner was informed that plaintiff's holder was for use on the International Harvester 50 T baler and on the New Holland baler, among others, in place of the factory-installed holders.

In retrospect, it might have been better to have explained in detail the device used on these balers. It seems reasonably certain, however, that the claims of the patent both as originally presented and as the examiner finally allowed, were drawn to and read over this prior and current usage."

We take it that this last sentence means to say that the claims were drawn to distinguish from the International and New Holland prior uses, and he who wrote the claims, knowing of these prior uses, did that in terms by specifying three fingers, but, with no disclosure of those prior uses in the Patent Office record, it can not be said that the Examiner allowed the claims taking these prior uses into consideration.

There is no substantive presumption of validity of Claims 1, 2 and 4, based on what was determined by the Patent Office Examiner.

As to the reissue matter:

If the original claims were valid, why the reissue?

Here is what plaintiff says in his brief in the Court of Appeals:

"On page 41 of Defendants' Brief, Defendant assumes that if Mr. England regarded the claims of his original patent as valid and infringed by Deere, he would have filed suit rather than to apply for a re-

issue. With this assumption, Plaintiff must disagree. It is almost axiomatic in the practice of law that a court action should be considered as a last resort. It is always advisable to effect a settlement if at all favorable in preference to last ditch litigation. Lawsuits are costly. They detract from victory and add to the burden of defeat. The Plaintiff might well have thought it preferable to place his patent again on the firing line in the Patent Office and expose it to Deere's objections, *inter alia*, rather than to jump into a lawsuit. And without the benefit of hindsight, who could say but that Deere might have a change of heart if the patent was reissued *in an improved form*. Moreover, Defendant's actions were clearly the proximate cause of Mr. England's *reassessment* of his patent protection." (Italics ours.)

The reissue statute (35 U. S. C. Sec. 251) is not for a new patent "in an improved form" or for "reassessment" of patent protection. The statute has no provision for anything like that. The reissue statute is for curing inoperativeness or invalidity by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent.

The District Court said (DA 102):

"The further contention that the reissue patent must be declared invalid because all of the original claims are retained therein must be rejected. If a reissue patent must be stricken down on that basis alone, the reissue statute may well be impliedly repealed insofar as it provides for the correction of a patentee's having claimed *less* in his original application than he was entitled to claim." (Italics ours.)

To the contrary of the District Court's appraisal of the matter, it was not the purpose of the reissue application to *enlarge* the scope of the patent; the purpose was to *limit* the scope of it to save it if possible.

In its Decision (App. 28) the Court of Appeals states that:

> "this is not a case where the patentee admits he claimed more than he was entitled to in the original patent. It was plaintiff's objective to correct defects in the specification."

That was the objective alleged in plaintiff's reissue application affidavit, but the explanation above quoted from his brief in the Court of Appeals is something entirely different.

We say that the purpose of applying for reissue was to have claims as specific as possible and still read on the Deere holder and to accomplish that without sacrificing Claims 1, 2 and 4 in order to thwart intervening rights on the part of Deere. Hence the resort to alleged "defects" in the specification and the pretense of correcting them. The three inserts in the specification are sterile. They would not be permitted unless the drawings themselves said the same thing, and that being so, if they were stricken it would leave no defect.

Claims 1, 2 and 4 can only be treated broadly. Under the doctrine of differentiation of claims, these claims can not now, in the presence of the added reissue claims, be construed narrowly to mean completely separated fingers, which is the specific characteristic recited in all of the added claims.

Under the law, Claims 1, 2 and 4 can not be construed as so limited:

Symington Co. v. *National Castings Company*, 250 U. S. 383, 385.

Cameron Iron Works v. *Stekoll*, 242 Fed. 2d 17, 21.

Landis Machine Co. v. *Parker-Kalon Corporation*, 190 Fed. 2d 543, 544.

Stearns v. *Tinker & Rasor*, 252 Fed. 2d 589, 597.

All of the claims added by reissue (7 to 12, inclusive) differ from original Claims 1, 2 and 4 by reciting that the fingers are completely separated from each other along their longitudinal edges.

As an example, reissue Claim 9 was derived from original Claim 4, and the following shows the difference

> 9. A twine holder for use in a tying machine having a pair *of spaced, apart* step by step twine engaging disks; said twine holder comprising a supporting arm having means adjacent one end for pivotally mounting the same *on said tying machine* and having a plate-like central presser finger extending therefrom and a pair of plate-like fingers mounted in spaced relation to said first presser finger, said pair of fingers having their adjacent longitudinal edges in the form of arcs, *and means rigidly mounting said pair of plate-like fingers on said arm, the said fingers being completely separated from each other along the longitudinal edges of each finger.*

The italicised phrases are the reissue additions. The one at the end is, of course, the material one, and it is clear that what is there set forth is also true of the prior International Harvester and New Holland holders. All of the other reissue claims have equivalent phrases.

It is petitioner's position that original Claims 1, 2 and 4 are met by the bridged twine holders of the cited prior patent art and the prior Massey-Harris holder, and that, in view of the prior International Harvester and New Holland holders, all the reissue claims must fall for non-compliance with the criteria of invention established by this Court.

Dunbar v. *Myers*, 94 U. S. 187.
Atlantic Works v. *Brady*, 107 U. S. 192.
Cuno Corporation v. *Automatic Devices Corporation*, 314 U. S. 84.

Great Atlantic & Pacific Tea Co. v. *Super-Market Equipment Corporation*, 340 U. S. 147.

It is also pertinent to refer to the ruling of the Court of Appeals in the instant case, where there was public use and sale of the subject matter of the reissue claims more than one year prior to the reissue application (DA Pages 23-24, 28, 72-73, and Plaintiff's Exhibit 3), in comparison with its previous ruling, on the same state of facts in the case of *Crane Packing Company* v. *Spitfire Tool & Machine Co.* (276 F. 2d 271, 274), cited in Defendant-Appellant's Brief. In the earlier case, the Court held such facts to be invalidating; here, the Court ruled that defense to be without merit (App. 28).

It is respectfully submitted that it is in the public interest that the patent reissue statutes, in the respects applicable here, be considered and their interpretation determined by this Court, that the applicable criteria of invention and patentability established by this Court be applied, and, accordingly, that this petition for a writ of certiorari should be granted.

Respectfully submitted,

ARTHUR H. BOETTCHER,
CAMERON A. WHITSETT,
EDWARD C. GRELLE,
Attorneys for Petitioner.

APPENDIX.

STATUTES INVOLVED.

"SECTION 251. *Reissue of defective patents.*

Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of a patentee claiming more or less than he had a right to claim in the patent, the Commissioner shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.

The Commissioner may issue several reissued patents for distinct and separate parts of the thing patented, upon demand of the applicant, and upon payment of the required fee for a reissue for each of such reissued patents.

The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.

No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent. (R. S. 4916; 35 U. S. C., 1946 ed., 64.)"

"SECTION 252. *Effect of reissue.*

The surrender of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law, on the trial of actions for causes thereafter arising, as if the same had been originally granted in such amended form, but in so far as the claims of the original and reissued patents are identical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent, to the extent that its claims are identical with the original patent, shall constitute a continuation thereof and have effect continuously from the date of the original patent.

No reissued patent shall abridge or affect the right of any person or his successors in business who made, purchased or used prior to the grant of a reissue anything patented by the reissued patent, to continue the use of, or to sell to others to be used or sold, the specific thing so made, purchased or used, unless the making, using or selling of such thing infringes a valid claim of the reissued patent which was in the original patent. The court before which such matter is in question may provide for the continued manufacture, use or sale of the thing made, purchased or used as specified, or for the manufacture, use or sale of which substantial preparation was made before the grant of the reissue, and it may also provide for the continued practice of any process patented by the reissue, practiced, or for the practice of which substantial preparation was made, prior to the grant of the reissue, to the extent and under such terms as the court deems equitable for the protection of investments made or business commenced before the grant of the reissue. (R. S. 4916; 35 U. S. C., 1946 ed., 64.)"

OPINION.

IN THE UNITED STATES COURT OF APPEALS

for the Seventh Circuit.

No. 13029 September Term and Session, 1960

JOHN W. ENGLAND,
Plaintiff-Appellee,

vs.

DEERE & COMPANY,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Illinois, Northern Division.

November 28, 1960.

Before DUFFY, SCHNACKENBERG and KNOCH, *Circuit Judges.*

DUFFY, *Circuit Judge.* This is a suit for the alleged infringement of Reissue Patent No. 23,927, issued January 18, 1955. All of the claims of this patent, except Claims 3, 5 and 6, are at issue in this suit.[1] The District Court found the claims in issue to be valid and infringed.

1. Claim 2 of the patent in this suit is representative of the claims retained from plaintiff's original Patent No. 2,594,140 and reads as follows:

"2. In a tying machine having a pair of spaced apart twine entraining disks, said disks having peripheral twine receiving notches, a twine holder comprising an arm pivotally mounted adjacent the periphery of said disks, a central finger on said arm, said central finger extending between said disks, a pair of fingers rigidly secured in spaced parallel relation to said central finger,

On October 15, 1951, plaintiff filed an application for a patent on the three-finger holder hereinafter described. The application was first denied by the examiner as not constituting invention over the Hornsby et al. British Patent No. 11,419. Several other references also were cited. Upon reconsideration of an amended application, the examiner, applying the same references, reversed himself. Patent No. 2,594,140 containing six claims was issued to plaintiff on April 22, 1952.

After he received his patent; plaintiff began commercial production of the three-finger holder, and the device met with immediate public acceptance. A large number of farmers brought the tying heads of their balers to Mr. England's farm for the installation of his twine holders. Within a space of a few years, the purchasers of twelve thousand of the holders substituted the patented device for the factory-installed equipment on various types of balers. This is a case of the better mousetrap, for the public has beaten a path to Mr. England's door to obtain his holder.

Prior to 1954, defendant, Deere & Co., did not market a twine-tie baler. It had been manufacturing grain and

---

said pair of fingers engaging the outer sides of said twine entraining disks, the face of each of said fingers having an arcuate twine engaging surface or edge portion."

Claim 7 is representative of the six new claims added to the patent in suit and reads as follows:

"7. In a twine tying machine having a pair of spaced apart twine entraining rotary disks, said disks having peripheral twine receiving notches; the combination with said machine of a twine holder comprising an arm, arm pivot means pivotally mounting said arm on said machine adjacent the peripheries of said disks, a central plate-like finger extending between said disks, a pair of plate-like fingers, means rigidly securing one end only of each of the fingers of said pair of fingers to said arm with one finger of said pair of fingers on each side of said central finger, the said fingers being completely separated from each other along all of their longitudinal edges and providing open spaces between said fingers whereby the said central finger may freely move between said disks during movements of said arm about said pivot means."

corn binders equipped with a single member twine holder. In 1951, it began experimenting with twine-tie balers. On June 9, 1953, Deere & Co. purchased three sets of plaintiff's holders to be used in its experimental work. Plaintiff personally delivered the holders to defendant. The twine-tie baler manufactured by defendant was placed on the market about June 1, 1954. These Deere machines were equipped with triple-finger twine holders. Plaintiff promptly notified defendant these holders were an infringement of his patent. Defendant replied that the claims of plaintiff's patent were anticipated by Cooley Patents No. 345,674 and No. 352,081.

On September 23, 1954, plaintiff filed an application for reissue of his patent. Six new claims, 7 to 12, inclusive, were added to the six claims of the original patent, all of which were retained. The application stated in the specification: "As seen in Figures 1, 3 and 4, all the longitudinal edges of said fingers are spaced from each other to provide completely open spaces between the fingers." The application specifically invited attention to Cooley Patents No. 345,674 and No. 352,081. On January 18, 1955, the Reissue Patent was issued embodying the six original claims and the six new claims.

The patented device is one element of the tying mechanism for twine-tie hay balers. There are several component parts to the tying mechanism such as interrelated entraining disks which are notched along their periphery to receive and engage a strand of twine; a holder to engage the twine within the entraining disks; a knotting device which fashions a knot in the twine, and a knife which cuts the twine to disengage the bale so that it may be deposited in the field. Usually a tractor furnishes the motive power.

The claimed invention relates to the twine holder. In knot-tying devices on balers and reapers, it had been

customary to retain the cord or twine with which the bales or bundles were tied, in a twine-entraining disk in which a spring-fashioned finger assists in holding the cord or twine in the entraining disk. The twine-holder described in the patent in suit consisted of three plate-like fingers. In earlier designs, this element was a single pivotally-mounted member which engaged the twine between dual-entraining disks and held it fast until the tying-sequence was completed. A later refinement was exemplified by the Hornsby British patent. This showed a rigid-back holder, and operated in a fairly satisfactory manner when bundles of ordinary weight and size were handled. Later, International Harvester Company and New Holland Mechine Division of the Sperry Corporation used a two-blade holder. However, when the tying mechanism was adapted for use on twine-tie balers and heavy bales resulted from green or damp hay, the old forms of holders were not satisfactory. Those baling hay with such devices almost uniformly had the experience that many bales which had not been properly tied due to the failure of the holding mechanism, were thrown out on the field. These bales had to be tied by hand. This procedure caused many exasperating delays.

Plaintiff England is a farmer by occupation. He was also engaged in custom baling. Like other balers, he encountered a high percentage of failure by the baling machine's tying mechanism. He and others tried a number of methods to overcome the deficiencies. What seemed to be the most obvious method was to increase the spring tension of the twine holder against the disk. This was tried but did not remedy the condition.

Plaintiff tried advancing the timing of the twine disk. He reset the needles at both further and closer distances. He changed the notches in the disks. He tried loosening the twine tension. He adjusted the stripper arms of the

twine to be cut sooner or later. He placed the cutting knife at different angles. He made adjustments to the bill hook. However, nothing he tried resulted in the baler turning out solidly packed bales without an undue percentage of untied bales leaving the machine. Others working in the art were also unsuccessful in finding a solution for the problem.

In August, 1950, plaintiff had had a particularly bad day of baling in which he encountered a large number of untied bales. That night he conceived the idea of constructing a plate-like three finger holder to replace the standard equipment on his baler which was equipped with a two-finger holder. He worked throughout the night welding a pair of three-finger holders and installed them on his baler. The result was sensational. In the next day's use, Mr. England encountered no untied bales after the first bale of the day. He continued to use his discovery experimentally on his own baler during the remainder of the 1950 baling season. The use of the new device continued to be successful.

Defendant argues the application for the original England Patent, No. 2,594,140, was cursory, and its allowance ill-advised. In spite of the allowance of the claims by the Patent Office over the Hornsby disclosure, defendant insists the claimed invention was clearly anticipated by Hornsby. Defendant also claims the Reissue Patent was clearly invalid largely for the same reasons it urged the original patent to be invalid. Defendant finds fault with the application for the reissue patent. Defendant also argues the disclosure of the International Harvester two-blade holder was not before the examiner.

On the application for the original patent, the examiner cited references in addition to the Hornsby patent. These were Remy, No. 314,056; British Patent No. 410 to Wilkinson, and British Patent No. 497,474 to Lanz. The

Hornsby and Wilkinson patents show a holder with a continuous back and three ribs which embrace a pair of disks. The Remy patent shows a two-blade holder with rivets along the top. The patent to Lanz disclosed a holder structurally similar to that of International Harvester in that it has two separated fingers. However, the Lanz holder is shown as fitting between two disks rather than straddling a single disk.

At the trial, experts were called by both sides to testify as to the state of the art and the claimed superiority of plaintiff's three-finger holder. Demonstrations were held. Test machines were build by defendant and by plaintiff. Testimony was received as to the result of various tests. One test disclosed that England's three-finger holder had significantly greater holding power than International Harvester's two-finger holder.

After consideration of the tests and demonstrations and of the conflicting testimony offered, the learned trial judge concluded that plaintiff's patent was valid and infringed. There was substantial evidence to support the trial court's findings and conclusions that plaintiff's invention was novel and constituted a significant advance in the art. There was ample evidence to sustain the statutory presumption in favor of the validity of plaintiff's patent. The presumption of validity applies to a Reissue Patent in the same manner as the original Patent. 35 U. S. C. § 252; *Hazeltine Research, Inc.* v. *Avco Manufacturing Corporation*, 7 Cir., 227 F. 2nd 137, 146. In any event, we cannot say the factual determinations of the trial court were clearly erroneous. *Armour & Company* v. *Wilson & Co.*, 7 Cir., 274 F. 2d 143.

Appropriate here is the statement of the Tenth Circuit in *Harris* v. *National Machine Works, Inc.*, 171 F. 2d 85, 88: "Finally, the presumption of validity arising from the granting of the patent by the Patent Office is strength-

ened by the additional presumption arising from the fact that the invention filled a want presented by a new situation, that it entered into immediate use, and that it met with substantial commercial success."

Likewise pertinent is the statement of this Court in *Ray-O-Vac Co.* v. *Goodyear Tire and Rubber Company*, 136 F. 2d 159 (affirmed 321 U. S. 275) where we stated at page 160: "The court found the patent to be valid and infringed. There was considerable oral testimony given as to the wide acceptance of the product immediately following its appearance on the market. * * * Such evidence bore directly upon the plaintiff's contention that the invention was not obvious. * * * The public appraisal of a new article's worth, evidenced by its prompt acceptance, outweighs, in some cases, a volume of opinion evidence given by professional experts."

Defendant lays much emphasis on its argument that the prior usage of two-finger holders by International Harvester and New Holland were not before the examiner. The trial court found to the contrary. The record shows that in Paper No. 3 of the Reissue Patent, the examiner was informed that plaintiff's holder was for use on the International Harvester 50 T baler and on the New Holland baler, among others, in place of the factory-installed holders.

In retrospect, it might have been better to have explained in detail the device used on these balers. It seems reasonably certain, however, that the claims of the patent both as originally presented and as the examiner finally allowed, were drawn to and read over this prior and current usage.

Furthermore, the claim for the invention of the patent in suit from the very first was directed to a holder having three fingers. The holders using two fingers had proved

inadequate when heavy bales were encountered. The use of two-finger holders in twine-tie balers was common knowledge to those working in the art. In view of the new and unexpected result by adding a third finger to the holder in the manner devised by plaintiff, the use of the International Harvester and New Holland two-finger holders would not have been a bar to the issuance of a patent for plaintiff's invention.

It is not now for the plaintiff to prove that all prior art references are overcome. The burden was on the defendant to show lack of inventive distinction. This it has not done. When the fingers had a web or bar on one end, there could not be the play between the fingers as in plaintiff's invention. This flexibility permits each finger individually to seek, of course within limits, a position within the disks compatible with the thickness and condition of the adjoining twine. The conclusion of the examiner that the England holder does represent a significant advance over the prior art has been confirmed by the subsequent events.

Defendant insists that the Reissue Patent must be declared invalid because all the original claims are retained therein. However, this is not a case where the patentee admits he claimed more than he was entitled to in the original patent. It was plaintiff's objective to correct defects in the specification. The six new claims all refer in some way to the changed specification. The right which the patentee had to correct defects in the specification surely gives him the right to include new claims incorporating those corrections.

Defendant has presented other arguments which we have carefully considered but which we believe to be without merit.

Judgment

AFFIRMED.

No. 712

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

DEERE & COMPANY,

Petitioner

v.

JOHN W. ENGLAND,

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 742

DEERE & COMPANY,

Petitioner

v.

JOHN W. ENGLAND,

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the United States District Court for the Southern District of Illinois, Northern Division, is reported at 182 F.Supp. 133. The opinion of the Court of Appeals for the Seventh Circuit (Pet. App. 21-28) is reported at 284 F2d 460. A Petition for a Rehearing filed December 13, 1960, was denied on January 18, 1961.

JURISDICTION

The judgment of the United States Court of Appeals for the Seventh Circuit was entered on November 28,

1960. The petition for a writ of certiorari was filed on February 18, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether respondent's patent for a twine holder was properly held valid by the trial court and court of appeals.

2. Whether the Patent Office's reissue of respondent's patent with the retention of the original claims and added narrower claims was legal.

STATUTES INVOLVED

35 U.S.C. 103 provides:

> A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made;

35 U.S.C. 251 provides in pertinent part:

> Whenever any patent is, through error without any deceptive intention, deemed wholly or partly inoperative or invalid, by reason of a defective specification or drawing, or by reason of the patentee claiming more or less than he had a right to claim in the patent, the Commissioner shall, on the surrender of such patent and the payment of the fee required by law, reissue the patent for the invention disclosed in the original patent, and in accordance with a new and amended application, for the unexpired part of the term of the original patent. No new matter shall be introduced into the application for reissue.
>
> . . . .

> The provisions of this title relating to applications for patent shall be applicable to applications for reissue of a patent, except that application for reissue may be made and sworn to by the assignee of the entire interest if the application does not seek to enlarge the scope of the claims of the original patent.
>
> No reissued patent shall be granted enlarging the scope of the claims of the original patent unless applied for within two years from the grant of the original patent.

35 U.S.C. 252 provides in pertinent part:

> The surrender of the original patent shall take effect upon the issue of the reissued patent, and every reissued patent shall have the same effect and operation in law, on the trial of actions for causes thereafter arising, as if the same had been originally granted in such amended form, but in so far as the claims of the original and reissued patents are identical, such surrender shall not affect any action then pending nor abate any cause of action then existing, and the reissued patent, to the extent that its claims are identical with the original patent, shall constitute a continuation thereof and have effect continuously from the date of the original patent.
>
> • • • •

35 U.S.C. 282 provides in pertinent part:

> A patent shall be presumed valid. The burden of establishing invalidity of a patent shall rest on a party asserting it.
>
> • • • •

STATEMENT

The patented device involved in this case is an element of a tying mechanism for twine tie balers. The basic design of the tying mechanism involved has been in use with little change since the advent of the grain reaper-binder in the 19th Century. Subsequent usage has seen the device adapted for use in twine-tie corn binders and more recently, since the early 1940's, on twine-tie hay

balers.[1] The function of the patented device is to hold the twine in place, first, when a hay bale is formed, and, secondly, when the twine is knotted. The twine holder is pressed against a notched disc to hold the twine by a leaf spring bearing down on the top of it.[2]

The respondent, England, is a farmer by occupation. He is also engaged in custom baling. In 1946 he purchased an International 50-T baler (DEERE-App. 16, 29). In his baling, Mr. England found that this baler was not satisfactory when heavy bales were desired or when grain or damp hay was encountered in the field. In such circumstances there was a high percentage of failures of the machine's tying mechanism. The resultant loose or untied bales which were turned out had to be tied by hand. (DEERE-App. 17, 18; ENG-App. 2, 3, 13) Mr. England and others tried to overcome this deficiency by a number of methods. The most apparent remedy of increasing the spring tension on the twine holder against the twine-entraining disc failed to rectify the condition (ENG-App. 6, 7, 13; DEERE-App. 30).

Finally, in August of 1950, Mr. England had a particularly bad day of baling with a large number of untied bales. That night he decided to try out a three-fingered holder to replace a standard equipment on his baler—a two-fingered holder. He spent the night welding a pair of such holders together and installed them on his baler. The results were little less than sensational. In baling operations on the succeeding day there were no untied bales after the first bale. (DEERE-App. 20)

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[1] See pages 14 and 59, Defendant-Appellee's Brief before the Court of Appeals, hereinafter abbreviated "DEERE-App.".

[2] A detailed explanation of the operation of a tying head incorporating respondent's invention may be found on pages 56-57 of Plaintiff-Appellee's Appendix before the Court of Appeals—hereinafter abbreviated "ENG-App.".

He continued to use his discovery experimentally on his own baler for the remainder of the 1950 baling season, and the device continued to be successful. (DEERE-App. 20)

On October 15, 1951, Mr. England filed an application for a patent on his three-fingered holder (Pet. 7; Deere Exh. 6B). The application was first denied by the Examiner as not constituting invention over Hornsby et al, British patent No. 11,419, and several other references were cited. (Pet. 11) Later, upon reconsideration of an amended application, the Examiner, applying the same references, reversed himself, and on April 22, 1952, Patent No. 2,594,140 containing six claims was issued to Mr. England. (DEERE-App. 115-118, Deere Exh. 6B)

After he received his patent, Mr. England began commercial production of the three-fingered holder. It is not disputed that the device met with immediate public acceptance. Mr. England first made by hand some five or six pairs which he sold for $12.50 per pair. He then sold between two and three thousand at $9.95 per pair. His holders were sold with a money-back guarantee if they failed to hold the twine in the disc, but he was never once asked to refund any money. Many farmers brought their tying heads to Mr. England's farm for installation of the twine holders. Later Mr. England lowered the price of his holders to $6.95. At the time of the trial, he had sold approximately eleven thousand additional holders at that price. (DEERE-App. 22-23)

Prior to June, 1954, the petitioner, Deere & Company, did not market a twine-tie baler, (DEERE-App. 13) although it had been manufacturing grain and corn binders equipped with single-fingered twine holders (DEERE-App. 59). However, in 1951 Deere & Company began experimenting in the twine-tie baler field (DEERE-App. 58). On June 9, 1953, Deere & Company purchased three sets of Mr. England's holders to be used in its experi-

mental work which were personally delivered by respondent (DEERE-App. 23-25, 72). Respondent was present at Deere's field trials of his holder which were a success (DEERE App. 25; ENG-App. 10). The twine-tie baler manufactured by Deere & Company was placed on the market about June 1, 1954. These machines were equipped with triple-fingered holders of the type patented by Mr. England (DEERE-App. 13, 71). When Mr. England learned of this, he promptly notified Deere & Company that its holders were infringement of his patent, but Deere & Company replied that it considered that the claims of his patent were anticipated by Cooley patents Nos. 345,674 and 352,081 (ENG-App. 15, Deere Exh. 5H). The Cooley patents disclose a holder wherein the holding elements are secured by a bridgelike arrangement such as shown in defendant's Exhibit 5E (Pet. 6). Such structure may also be found in the patents to Wilkinson and Hornsby, which were cited by the Patent Office Examiner in the original patent (ENG-App. 62, Deere Exh. 6B). At the same time Deere & Company was denying Mr. England's patent, it was advertising the merits of the three-fingered holder in its advertising brochures. (ENG-App. 53-57).

On September 23, 1954, Mr. England filed an application for reissue of his patent. The old claims were all retained and six new claims were added to the original patent. The specification was amended to insert the following: "As seen in Figures 1, 3 and 4, all the longitudinal edges of the said fingers are spaced from each other to provide completely open spaces between the fingers". (DEERE-App. 121) The application specifically invited attention to the aforementioned Cooley patents. (Eng. Exh. 11; ENG-App. 65-67) It was also noted that Mr. England's holder was a replacement for the factory equipped twine holders of International Harvester and New Holland, *inter alia:* (Eng. Exh. 11; ENG-App. 66) On January 18, 1955, the reissue patent was granted em-

bodying the six original claims and six new claims. (DEERE-App. 119-122)

Negotiations were thereafter again commenced with Deere & Company, but to no avail. Finally, on June 9, 1955, Mr. England, by his attorneys, gave final notice to Deere & Company to cease and desist use of the twine holders embodying his invention. Deere & Company, however, now took the position that the open spaced relationship of the three fingers did not constitute invention in view of the prior use by International Harvester and New Holland of two-fingered holders bearing like spaced relationship. (Deere Exh. 5H)

The present suit was filed November 28, 1956. (DEERE-App. 1) The trial of the cause was before U. S. District Judge Frederick O. Mercer without jury. (DEERE-App. 2) Experts and those skilled in the art were called on both sides to testify on the state of the art and the superiority of the three-fingered holder. (ENG-App. 4, 12; DEERE-App. 57, 63, 76) Demonstrations showing the operation of the mechanism involved were performed before the trial judge. (ENG-App. 16-31, 34-36) It was brought out that the three-fingered holder was superior in that it allowed greater slippage of the twine during the critical period of knotting. (ENG-App. 26, 30, 32) Experts of Deere & Company, were of the opinion that the triple-fingered holder did not actually provide more holding power than the one and two-fingered holders of the prior art. (ENG-App. 26, 31, 32) It is interesting to note that this was contrary to the position originally taken by Deere & Company as to why the three-fingered holder was so superior (Deere Exh. 5H). However, several tests were run before the court which showed that Mr. England's three-fingered holder had a definitely superior holding power in contrast to the two-fingered International Harvester holder (ENG-App. 32-36). There was also testimony as to the operability of web-back

holders similar to Deere's Exhibit 5E (Pet. 6). Testimony revealed that when such holders were tested, it was found that the twine would break. It was Mr. England's opinion that the reason for this was that the web-back holder had no flex in it. (ENG-App. 12)

The district court found respondent's patent to be valid and infringed (DEERE-App. 92-112) The court of appeals affirmed the finding that there was substantial evidence to support the trial court's findings and conclusions that respondent's invention was novel and constituted a significant advance in the art (Pet. App. 26). The court further stated (Pet. App. 26):

> . . . . . There was ample evidence to sustain the statutory presumption in favor of the validity of plaintiff's patent. The presumption of validity applied to a Reissue Patent in the same manner as the original Patent. 35 U.S.C. § 252; *Hazeltine Research, Inc.* v. *Avco Manufacturing Corporation*, 7 Cir., 227 F. 2nd 137, 146. In any event, we cannot say the factual determinations of the trial court were clearly erroneous. *Armour & Company* v. *Wilson & Co.*, 7 Cir., 274 F.2d 143.

The court held in reference to the claims in the Reissue Patent which were retained from the original patent (Pet. App. 28):

> Defendant insists that the Reissue Patent must be declared invalid because all the original claims are retained therein. However, this is not a case where the patentee admits he claimed more than he was entitled to in the original patent. It was plaintiff's objective to correct defects in the specification. The six new claims all refer in some way to the changed specification. The right which the patentee had to correct defects in the specification surely gives him the right to include new claims incorporating the corrections.

ARGUMENT

1. The Courts below correctly found respondent's patent to be valid. It will thus be noted that the trial judge heard controversial testimony of expert witnesses on behalf of the respective parties and other witnesses concerning pertinent factual matter, and in addition viewed extensive tests and demonstrations presented by both sides as well as documentary evidence, models and other exhibits. Under Rule 52(a), Federal Rules of Civil Procedure for the United States District Courts, his findings of fact are not to be set aside unless clearly erroneous. This Court in *Graver Tank & Mfg. Co.* v. *Linde Air Products*, 1949, 336 U.S. 271, held Rule 52(a) clearly applicable to a case such as the instant one "where the evidence is largely the testimony of experts as to which a trial court may be enlightened by scientific demonstrations."

The presumption of validity which exists in reference to a patent has been codified at 35 U.S.C. 282 *supra*, p. 3 and is abundantly fortified by the evidence.

There has never been any dispute but that respondent's holder was superior. But officials of Deere & Co. seemed unable to agree among themselves as to why this should be so. One Deere witness stated that it would be *inobrious* that respondent's holder would have more holding power, but that its true superiority was that it allowed the twine to slip at the proper time. He felt that the holding power of the twine holder would be essentially the same whether a one-fingered, two-fingered or three-fingered holder were used (ENG-App. 26, 31, 32). However, earlier an official of Deere & Co. had stated that it would be obvious that a three-fingered holder would have more holding power than a two-fingered or one-fingered holder (Deere Exh. 5H). On the other hand, an expert called for petitioner testified that he would expect no

difference in the force required to pull the string out of the twine holder, provided the lateral force is the same whether there are two or three fingers. The only effect of adding a third finger, as he saw it, would be to increase the area of contact and thereby decrease the intensity of lateral force which would have tended to decrease the tendency to break the fibers. (DEERE-App. 92)

This very conflict among petitioner's witnesses would appear, in itself, to negate any charge of obviousness. Actually, it is submitted that the testimony of petitioner's expert sets forth exactly what one probably should expect from a three-fingered hold. It will thus be appreciated that in facing the problem initially, there would be no obvious reason to believe that the addition of a third finger would add to the gripping power of the holder inasmuch as one would expect the gripping characteristics of the holder to be largely determined by the force of the spring bearing down on the holder rather than upon the size of the holder itself. The apparent answer was to increase the spring pressure. This is precisely what Mr. England first tried and what agents for International Harvester had been advised to do—all without success. (ENG-App. 7, 13) Respondent testified to a number of other solutions which he tried to no avail. (ENG-App. 7) A witness for petitioner testified that there were many reasons that a bale might come out of the baler untied. (ENG-App. 24) The actual solution discovered by respondent is one which International Harvester was unable to discover for itself and also which petitioner was unable to discover independently despite an obviously considerable amount of experimentation in the area. Certainly the evidence establishes that respondent's invention falls well within the statutory standards. 35 U.S.C. 103, *supra*, p. 2. Moreover, with the attending statutory presumption of validity under 35 U.S.C. 282, *supra*, p. 3, it was, as pointed out by

the court of appeals, not "for the plaintiff to prove that all the prior art references are overcome. The burden was on the defendant to show lack of inventive distinction. This it has not done." (Pet. App. 28)

In the matter of utility, the evidence is that respondent's invention has produced a new and beneficial result never before attained. It is practically undisputed that when a compact firm bale of hay is desired, prior knotter assemblies left too many untied bales in the field, particularly when green or damp hay was encountered. But respondent's invention overcame this difficulty. Now that the patented device has succeeded, "it may seem plain to anyone that he could have done it as well. This is often the case with inventions of the greatest merit. It may be laid down as a general rule, though perhaps not an invariable one, that if a new combination and arrangement of known elements produce a new and beneficial result, never obtained before, it is evidence of invention." *The Barbed Wire Patent*, 143 U.S. 275, 283.

Petitioner does not deny respondent's commercial success. Within the space of a few years, the purchasers of over twelve thousand of respondent's holders substituted the patented device for the factory-installed equipment on various types of balers. As stated by the court of appeals: "This is a case for the better mouse trap, for which the public has beaten a path to Mr. England's door to obtain his holder." (Pet. App. 22). Commercial success of an invention is a factor which strengthens the presumption of patentability. *The Barbed Wire Patent*, *supra*; *Ray-O-Vac Co.* v. *Goodyear Tire and Rubber Co.*, 321 U.S. 274.

2. The question of whether the Patent Office had authority to allow narrower claims in the reissue is moot insofar as the ultimate result is concerned. For even if such claims should be found invalid, petitioner still in-

fringes claims carried over from the original application which, under 35 U.S.C. 252, *supra*, p. 3, have effect continuously from the date of the original patent. But aside from the question of mootness, respondent is aware of no authority to the effect that additional claims of a narrower scope cannot be submitted in an application for a reissue patent without an admission by applicant that he was claiming more than he had a right to claim in the original patent. Nor has petitioner presented any such authority. Nor does inspection of 35 U.S.C. 251 and 252, or Rules 171-179, Rules of Practice of the United States Patent Office in Patent Cases, 35 C.F.R. §§ 1.171-1.179, disclose any prohibition such as that contemplated by petitioner. To the contrary, both the statutory provision and rules[3] specifically refer to a situation where "the claims of the original and reissued patents are identical." 35 U.S.C. 252, *supra*, p. 3.

If any restriction such as suggested by petitioner was intended, it is only realistic to conclude that it would have been spelled out in the statutes and regulations in implementation thereof.

Petitioner also takes the position that the infringed claims from the original patent read on the prior art (Pet. 16) of Hornsby, Wilkinson, Cooley and Massey-Ferguson. This contention is without merit. All these references constitute a holder with a continuous back and three ribs which embrace a pair of disks. Apparently the Petitioner overlooks the term "finger" in these claims, in contrast to the rib-type structure disclosed in the

[3] Rule 176 provides: "Examination of reissue. An original claim if re-presented in the reissue application, is subject to re-examination, and the entire application will be examined in the same manner as original application, subject to the rules relating thereto, excepting that division will not be required. Applications for reissue will be acted on by the examiner in advance of other applications."

prior art.[4] Not only is the term "finger" used in the claims and specification, but the drawings show England's fingers to be fingers as the normal usage of the term would imply—having open spaces between them. It is of course fundamental that in patents, claims are construed in the light of the specification and drawings. *Bates* v. *Coe*, 1878, 98 U.S. 31, 38-39. *Walker on Patents*, Deller's Edition, §§ 260, 261, pp. 1241-1248.

3. While not set forth by petitioner as a question for review, petitioner cites the case of *Crane Packing Co.* v. *Spitfire Tool and Machine Co.*, CCA, Ill. 276 F.2d 271, *cert. denied*, 363 U.S. 820, as constituting a further invalidating state of facts to the reissue patent in this case. However, *Crane Packing Co.* is distinguishable from the facts in this case inasmuch as the added claims in re-

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[4] The claims are as follows:

1. In a tying machine having a pair of spaced apart twine entraining rotary disks, said disks having peripheral twine receiving notches, said twine holder comprising an arm mounted adjacent the periphery of said disks, a central plate-like finger on said arm, said central finger extending between said disks, a pair of plate-like fingers rigidly secured in spaced parallel relation to said central finger, said pair of fingers lying adjacent the outer sides of said twine entraining disks.

2. In a tying machine having a pair of spaced apart twine entraining disks, said disks having peripheral twine receiving notches, a twine holder comprising an arm pivotally mounted adjacent the periphery of said disks, a central finger on said arm, said central finger extending between said disks, a pair of fingers rigidly secured in spaced parallel relation to said central finger, said pair of fingers engaging the outer sides of said twine entraining disks, the face of each of said fingers having an arcuate twine engaging surface or edge portion.

4. A twine holder for use in a tying machine having a pair of step by step twine engaging disks; said twine holder comprising a supporting arm having means adjacent one end for pivotally mounting the same and having a plate-like central presser finger extending therefrom and a pair of plate-like fingers mounted in spaced relation to said first presser finger, said pair of fingers having their adjacent longitudinal edges in the form of arcs.

spondent's reissue are narrower claims than those retained from the original patent. Other distinctions also exist. In any event, it is a moot question because even if the reissue claims should be held inapplicable to the earlier infringement, the original claims would remain valid and infringed.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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FILE

Supreme Court of the United States

No. 742

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

IN THE

Supreme Court of the United States

OCTOBER TERM, 1960.

No. 742.

DEERE & COMPANY,

Petitioner,

vs.

JOHN W. ENGLAND,

Respondent.

PETITIONER'S REPLY TO RESPONDENT'S BRIEF IN OPPOSITION.

The Brief for Respondent in Opposition completely avoids the issues presented by petitioner.

Petitioner's first question presented for review is as follows (Petition, Page 2):

> "1. Can a patentee, desiring narrower claims by reissue, avoid admission that he was claiming more than he had a right to claim in the original patent by making superfluous insertions in the specification in alleged correction of defects there?"

Respondent, of course, does not dare to reply in the affirmative; and, significantly, neither does he deny that his insertions in the specification, in alleged correction of defects there, are superfluous.

What respondent does, under "Questions Presented" on Page 2 of his brief, is to present his own version as follows:

> "2. Whether the Patent Office's reissue of respond-

ent's patent with the retention of the original claims and added narrower claims was legal."

Respondent thus places the onus on the Patent Office, and we, notwithstanding, answer in the negative, pointing out that the originating responsibility is respondent's own.

Copy of the reissue patent in suit is at Pages 119-122 of the Appendix to Brief for Defendant-Appellant, and, for the convenience of the Court, a reproduction is bound in the end of this Brief. In accordance with the Patent Office Rules, inserts are printed in italics, and the artificiality of those in the specification (lines 62 and 63 of Column 1 and lines 6-8 of Column 2) is manifest on their face. As stated in the Petition, Page 15, they would not be permitted unless the drawings spoke for themselves, and, if they were not there, there would be no defect; and hence no defect in the original specification.

The underlying reissue statute, 35 U. S. C. 251, provides only the following bases for reissue:

(a) a defective specification or drawing; and
(b) a patentee claiming more or less than he had a right to claim.

In the case at bar, respondent's original patent did not, in truth, qualify under (a), and, since the claims added by reissue were declared to be narrower than the original claims,* the only basis for reissue could have been under (b), invalidity on the ground of claiming more than the patentee had a right to claim.

This Court, in *McCormick Machine Co.* v. *Aultman*, 169 U. S. 606, referring to the predecessor reissue statute R. S. 4916, said at Page 610:

"The plain purpose of this section is to give the patentee an opportunity to make valid and operative

* This means Claims 1, 2 and 4; Claims 3, 5 and 6 are limited to a rounded end on one of the fingers, and are not in issue.

> that which was before invalid and inoperative; invalid, because it claimed as new that which had been previously invented or used by the public; inoperative, because the specification was defective or insufficient."

The present statute is the same in substance so far as the point here is concerned.

As pointed out on Page 15 of the Petition, Claims 1, 2 and 4, under the doctrine of differentiation of claims, cannot now have saving limitations read into them.

We respectfully submit that, respondent having artfully evaded declaring Claims 1, 2 and 4 to be invalid, it is for a Court to declare it for him.

As also pointed out on Page 15 of the Petition, it was and is respondent's purpose to cling to these three claims in order to prevent assertion of intervening rights on the part of defendant-petitioner.

In quoting the Title 35 statutes involved in the Appendix to the Petition, we quoted Section 252 in its entirety on Page 20. In respondent's brief, Page 3, the first paragraph of Section 252 is quoted, but the second paragraph of that section, having to do with intervening rights, is omitted.

Respondent's Argument with reference to the reissue aspects of the case begins near the bottom of Page 11 of its brief and opens with the following:

> "2. The question of whether the Patent Office had authority to allow narrower claims in the reissue is moot insofar as the ultimate result is concerned. For even if such claims should be found invalid, petitioner still infringes claims carried over from the original application which, under 35 U. S. C. 252, *supra*, p. 3, have effect continuously from the date of the original patent."

There is no question of whether the Patent Office had "authority" to allow narrower claims, assuming their subject matter is patentable. What we say is that, under the

statute, a patentee can not add narrower claims by reissue except by striking a broader claim or claims for invalidity.

And then respondent follows (Page 12) with the following remarkable statement:

> "But aside from the question of mootness, respondent is aware of no authority to the effect that additional claims of a narrower scope cannot be submitted in an application for a reissue patent without an admission by applicant that he was claiming more than he had a right to claim in the original patent. Nor has petitioner presented any such authority. Nor does inspection of 35 U. S. C. 251 and 252, or Rules 171-179, Rules of Practice of the United States Patent Office in Patent Cases, 35 C. F. R. §§ 1.171-1.179, disclose any prohibition such as that contemplated by petitioner. To the contrary, both the statutory provision and rules specifically refer to a situation where 'the claims of the original and reissued patents are identical'. 35 U. S. C. 252, *supra*, p. 3.
>
> "If any restriction such as suggested by petitioner was intended, it is only realistic to conclude that it would have been spelled out in the statutes and regulations in implementation thereof."

The theory of respondent seems to be that anything that is not specifically negatived by the reissue statute is permissible.

We submit that the statute (Sec. 251) is its own authority; hence our reference, on Page 10 of the Petition, to "the exacting limitations of the statute." Let us also refer to the *McCormick* v. *Aultman* case above mentioned, and the case of *General Radio Co.* v. *Allen B. Du Mont Laboratories*, 129 F. (2d) (C. C. A. 3rd) at Pages 613 and 614.

It would seem that respondent's stated position in this regard should be cited as another reason why the writ prayed for should be granted. If the decisions of the Courts below, finding all the claims in issue valid, original as well as added, were to be taken as approving the theory

of respondent, we foresee such *ex post facto* claim tailoring, by the reissue process, in many a patent case in the future.

Respondent, in closing *his* Argument 2 (Pages 12-13), takes issue with petitioner's contention that Claims 1, 2 and 4 are met by the cited prior patent art. He states that, apparently, petitioner overlooks the term "finger" in these claims; on the contrary, petitioner has pointed out (Pages 11 and 15) why the word "finger" alone can not be accepted as distinguishing from the Hornsby Figure 17 holder, and the same applies in respect of all the prior bridged element holders.

Petitioner's *second* question presented for review is as follows:

> "2. Twine holders of the prior art comprise one, two or three flat elements for cooperation with a pair of parallel twine entraining disks; of the two-element type, some have their outer longitudinal edges solidly bridged and some have them completely separated; of the three-element type, the prior art holders have their elements bridged. Is it patentable to omit the bridge from the three-element type, leaving the longitudinal edges of the elements completely separated as in the two-element type?"

As to this, on page 2 of his brief under "Questions Presented", respondent substitutes the following:

> "1. Whether respondent's patent for a twine holder was properly held valid by the trial court and court of appeals."

That is all-inclusive; we answer in the negative.

Respondent's "Statement", beginning near the bottom of page 3 and ending on page 8 of his brief, is replete with controversial and argumentative statements. Petitioner's "Statement of the Case," pages 3-9 of the Petition con-

tains neither, and we deem it appropriate to pass to respondent's Argument 1, pages 9-11 of his brief.

At the opening of the Reply Brief for Defendant-Appellant in the Court of Appeals, we said:

> "Although the patent in suit is the basis upon which plaintiff's case must rest, he pays scant attention to it in his brief. He takes the asserted patent claims as an accomplished fact and treats them as unassailable because the Examiner allowed them.
>
> "Defendant, on the other hand, considers the formulating processes of the two grants of controlling importance."

Although respondent moved the Court of Appeals to transmit to this Court certified copies of the Patent Office file histories of respondent's original patent and of the reissue patent, he has made no reference thereto in his brief in opposition.

At the outset of his Argument, page 9, respondent cites Rule 52 (a) of the Federal Rules of Civil Procedure, and also 35 U. S. C. 282, which he quotes on page 3 and which provides that a patent shall be presumed valid, and that the burden of establishing invalidity shall rest on a party asserting it. We have, of course, no quarrel with either of these items.

When the said presumption was invoked by the District Court, it was with the understanding that the International Harvester and New Holland separated-finger holders (Petition pages 5 and 6) had been taken into account by the Patent Office Examiner in allowing the claims (DA 108); and the Court of Appeals followed the District Court, but not on any basis that the Patent Office file histories established the fact (App. 27, Petition Page 12). We submit that the said file histories could be the only competent evidence that the Patent Office Examiner was apprised of those prior holders and had taken them into account; and those file histories are completely silent in that regard. These International Harvester and New Holland holders

are "the two-element type" with "their outer longitudinal edges" "completely separated", set forth in petitioner's statement of Question 2 for review.

Utility, improvement, public acceptance, and commercial success are to be taken into account in resolving doubts as to the presence of invention, but they count for naught, if there was clearly no invention in the first place.

Respondent's assertion that testimony revealed that when the three element web-back holders were tested the twine would break—is solely the testimony of England (Eng. App. 12) predicated entirely on a self-serving model made by England (Plaintiff's Exhibit 13). There is no finding of fact regarding any twine breakage by a web-backed holder in the trial court's decision, nor any reference thereto in the appellate court's opinion. The exact opposite is the testimony of Dr. Baldwin (DA 88-90) with regard to a Deere three element holder having the back edges bridged or welded together (Defendant's Exhibit 17). Also, the prior art and prior uses covering a 60 year span from 1885 to 1945, represented by Wilkinson, British 410/85 (January, 1885) Hornsby, British 11419/88 (Aug. 1888), Cooley U. S. 352,081 (Nov. 1886) and Massey-Harris 10 years of manufacture and sale in substantial quantities from 1935 to 1945 (Defendant's Exhibit 5E, page 14, Appendix to Brief for Defendant-Appellant), all employing three element web-backed twine holders, would never have come to pass if these web-backed twine holders had suffered from an inherent defect of breaking the twine. Still further, even if it should be admitted for the sake of argument, that the web-backing might possibly have had some tendency to break twine, it surely cannot be maintained that the mere elimination of the web-backing constituted invention, particularly in view of the elimination of the web-backing in the two-finger International Harvester and New Holland twine holders. From the viewpoint of the ordinary mechanic,

this was merely a manufacturing transition from the old days of making a large proportion of metallic articles in the form of castings, which because of their inherent brittleness had to be reinforced by backings, webs and the like, to the present day practice of making a large proportion of metallic articles in the form of stampings, which because of their greater ductibility do not need reinforcing webs, backings, etc.

It is submitted that the facts in the case at bar fail to meet the criteria of invention established by this Court (see cases cited on Pages 16-17 of the Petition).

Respondent presents his Argument 3 (Pages 13-14) with reference to *Crane Packing Co.* v. *Spitfire Tool and Machine Co.* referred to on Page 17 of the Petition. Respondent's point is that the facts in the instant case are distinguishable from the facts in that case, in that the added claims in respondent's reissue are narrower claims than those retained from the original patent. Respondent says that other distinctions also exist, but he does not specify them. He closes, however, by saying that it is moot here because "the original claims would remain valid and infringed"; and we have already treated of that subject above.

We respectfully submit that respondent's brief in opposition has shown no cause for denying the writ prayed for by petitioner, and that the writ should be granted as originally prayed.

Respectfully submitted,

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TWINE HOLDER

Original Filed Oct. 15, 1951

Fig. 1

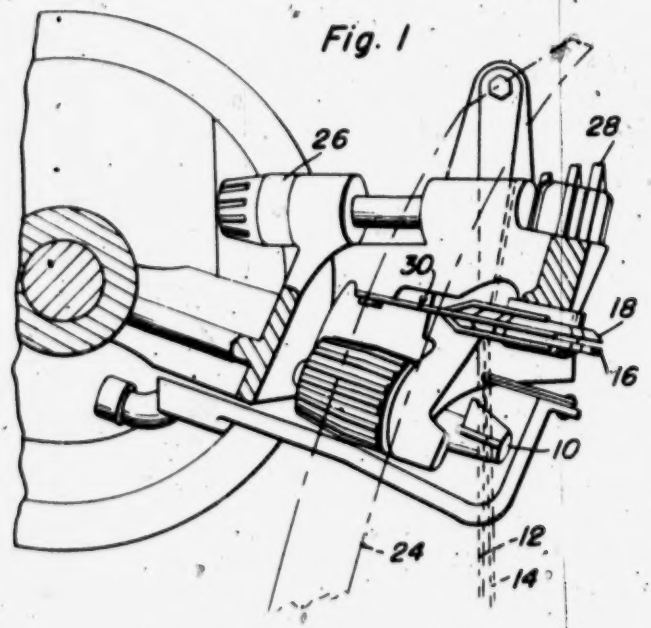


Fig. 4

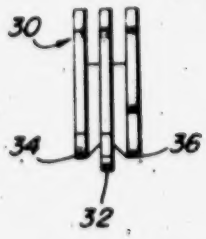


Fig. 2

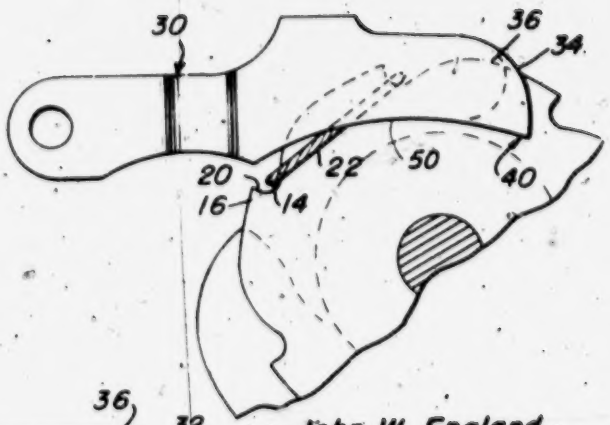
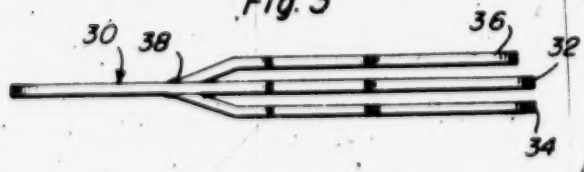


Fig. 3



John W. England

INVENTOR.

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Attorneys

23,927

TWINE HOLDER

John W. England, Iowa Falls, Iowa

Original No. 2,594,140, dated April 22, 1952, Serial No. 251,407, October 15, 1951. Application for reissue September 23, 1954, Serial No. 458,724

12 Claims. (Cl. 289—14)

Matter enclosed in heavy brackets [ ] appears in the original patent but forms no part of this reissue specification; matter printed in italics indicates the additions made by reissue.

This invention relates to a twine holder and particularly to an improved device for retaining the twine within the twine entraining disk of knotting devices.

In the utilization of knot tying devices on such devices as reapers and haybalers, etc., it is customary to retain the cord or twine with which the bales or bundles are tied up in a twine entraining rotary disk in which a spring fastened finger assists in holding the cord or twine in the entraining disk. In heavy application, particularly in balers, difficulty is had because of the twine pulling out of the entraining disks, leaving loose bales when the same are dropped on the field.

The present invention provides a twine holder for cooperation with the twine engaging disk of the usual knotting device having sufficient twine engaging surface to prevent disengagement of the twine from the twine entraining disk. This is accomplished by providing, in addition to the usual central twine holding finger, a plurality of laterally spaced fingers extending over the outer circumference of the twine engaging disk so as to provide a plurality of twine engaging surfaces on the inner and outer sides of the twine engaging disk.

It is accordingly an object of this invention to provide an improved twine holder.

It is a further object of this invention to provide a twine holder having a plurality of fingers engaging both the inner and outer surfaces of the twine entraining disk. It is a further object of this invention to provide a twine holder having a plurality of fingers, one of which prereleases the twine from the twine engaging disk.

Other objects and many of the attendant advantages of this invention will be found in the following detailed description, taken in conjunction with the accompanying drawing, in which:

Figure 1 is a perspective view of a portion of a knotter showing the improved twine holder in place;

Figure 2 is an enlarged side elevation of the twine holder in place on a twine entraining disk;

Figure 3 is an enlarged top plan view of the twine holder; and

Figure 4 is an end view of the twine holder.

In the exemplary embodiment of the invention, a knotting device includes a periodically operable bill hook for forming knots in a pair of cords forming the ends of a loop around a bale of material (not shown). Adjacent to bill hook **10** is a pair of *spaced apart* twine entraining rotary disks **16** and **18**, *as shown in Figure 1*, having peripheral notches **20** therein for retaining the bight **22** of the twine **14**, said twine being presented to the peripheral notch **20** by means of a needle device **24**. When the cord **14** is drawn across the periphery of the disks **16** and **18**, the entraining wheels **16** and **18** are driven by an intermittent gear **26** by means of a worm **28** to advance the bight **22** under the pivoted twine holder **30**, after which the tying cords are cut off and the needle retreats to lay the track for another bale. It has heretofore been customary to use a twine holder having a single finger received in the space between the entraining wheels **16** and **18**. The present invention provides a twine holder arm **30** having a plurality of fingers including a central finger **32** which passes between or is received in the space between the entraining wheels **16** and **18** for the customary purpose of forcing the twine down in and between the disks where it is frictionally held. A pair of laterally spaced holding fingers **34** and **36** are rigidly attached to

the holder **30** by suitable means such as welding **38**. This pair of fingers **34** and **36** are parallel to and embrace the outer surfaces of the wheels **16** and **18** so that the twine is additionally held between the fingers **34** and **36** and the outer surface of the twine engaging wheels **16** and **18**. *As seen in Figures 1, 3 and 4, all of the longitudinal edges of said fingers are spaced from each other to provide completely open spaces betwen the fingers.*

The surface of the fingers **32**, **34** and **36** presented toward the periphery of the wheels **18** and **16** is provided with an arcuate engaging surface or edge **50** to facilitate the passage of the twine between the fingers and the gripping wheels. The fingers **32** and **34** are provided with hooked nose releases **40** for releasing the twine suddenly during the motion of the twine engaging wheels. However, the outside finger **36**, that is, the side furtherest removed from the knotting element, is provided with a rounded end to secure a pre-release of that twine that is still held by the needle and which will retreat to lay the new track for the coming bale.

In operation, the improved twine holder provides sufficient twine engaging surface to prevent the heavy operation from withdrawing the twine from the twine entraining disk.

While for purposes of illustration, a preferred embodiment has been shown and described according to the best present understanding thereof, it will be apparent that changes and modifications can be made therein, without departing from the true spirit of the invention.

Having described the invention, what is claimed as new is:

1. In a tying machine having a pair of spaced apart twine entraining rotary disks, said disks having peripheral twine receiving notches, said twine holder comprising an arm mounted adjacent the periphery of said disks, a central plate-like finger on said arm, said central finger extending between said disks, a pair of plate-like fingers rigidly secured in spaced parallel relation to said central finger, said pair of fingers lying adjacent the outer sides of said twine entraining disks.

2. In a tying machine having a pair of spaced apart twine entraining disks, said disks having peripheral twine receiving notches, a twine holder comprising an arm pivotally mounted adjacent the periphery of said disks, a central finger on said arm, said central finger extending between said disks, a pair of fingers rigidly secured in spaced parallel relation to said central finger, said pair of fingers engaging the outer sides of said twine entraining disks, the face of each of said fingers having an arcuate twine engaging surface or edge portion.

3. In a tying machine having a pair of spaced apart twine entraining disks, said disks having peripheral twine receiving notches, a twine holder comprising an arm pivotally mounted adjacent the periphery of said disks, a central finger on said arm, said central finger extending between said disks, a pair of fingers rigidly secured in spaced parallel relation to said central finger, said pair of fingers engaging the outer sides of said twine entraining disks, one of said fingers having a rounded end for initiating release of said twine.

4. A twine holder for use in a tying machine having a pair *of* step by step twine engaging disks; said twine holder comprising a supporting arm having means adjacent one end for pivotally mounting the same and having a plate-like central presser finger extending therefrom and a pair of plate-like fingers mounted in spaced relation to said first presser finger, said pair of fingers having their adjacent longitudinal edges in the form of arcs.

5. A twine holder for use in a tying machine having a pair *of* step by step twine engaging disks; said twine holder comprising a supporting arm having means adjacent one end for pivotally mounting the same and having a plate-like central presser finger extending therefrom and a pair of plate-like fingers mounted in spaced relation to said first presser finger, said pair of fingers having their adjacent longitudinal edges in the form of arcs, said first named presser finger and one of said pair of plate-like fingers being of substantially the same length and said other plate-like finger of said pair of fingers having a rounded end.

6. A twine holder for use in a [typing] *tying* machine having a pair *of* step by step twine engaging disks; said twine holder comprising a supporting arm having means adjacent one end for pivotally mounting the same and having a plate-like central presser finger extending therefrom and a pair of plate-like fingers mounted in spaced relation to said first presser finger, said pair of fingers having their adjacent longitudinal edges in the form of arcs, said first named presser finger and one of said pair of plate-like fingers being of substantially the same length and each having a hooked nose, and said other plate-like finger of said pair of fingers having a rounded end.

7. In a twine tying machine having a pair of spaced apart twine entraining rotary disks, said disks having peripheral twine receiving notches; the combination with said machine of a twine holder comprising an arm, arm pivot means for pivotally mounting said arm on said machine adjacent the peripheries of said disks, a central plate-like finger extending between said disks, a pair of plate-like fingers, means rigidly securing one end only of each of the fingers of said pair of fingers to said arm with one finger of said pair of fingers on each side of said central finger, the said fingers being completely separated from each other along all of their longitudinal edges and providing open spaces between said fingers whereby the said central finger may freely move between said disks during movements of said arm about said pivot means.

8. In a tying machine having a pair of spaced apart twine entraining disks, said disks having peripheral twine receiving notches; the combination with said machine of a twine holder comprising an arm, arm pivot means for pivotally mounting said arm on said machine adjacent the peripheries of said disks, a central finger on said arm, said central finger extending between said disks, a pair of fingers rigidly secured in spaced parallel relation to said central finger, said pair of fingers engaging the outer sides of said twine entraining disks, the face of each of said fingers having an arcuate twine engaging surface or edge portion, the said fingers being completely separated from each other along all of their longitudinal edges and providing open spaces between said fingers whereby the said central finger may freely move between said disks during movements of said arm about said pivot means, said central finger being integral with said arm.

9. A twine holder for use in a tying machine having a pair of spaced apart step by step twine engaging disks; said twine holder comprising a supporting arm having means adjacent one end for pivotally mounting the same on said tying machine and having a plate-like central presser finger extending therefrom and a pair of plate-like fingers mounted in spaced relation to said first presser finger, said pair of fingers having their adjacent longitudinal edges in the form of arcs, and means rigidly mounting said pair of plate-like fingers on said arm, the said fingers being completely separated from each other along the longitudinal edges of each finger.

10. A twine holder for use in a tying machine having a pair of spaced apart step by step twine engaging disks;

said twine holder comprising a supporting arm having means adjacent one end for pivotally mounting the same on said tying machine adjacent said disks, said twine holder having a plate-like central presser finger extending from said arm and forming an integral part thereof and a pair of plate-like fingers, means rigidly mounting said pair of plate-like fingers on said arm in parallel relation to each other and to said central presser finger, said last named means comprising the sole attachment for said pair of plate-like fingers to said arm whereby to provide open spaces between said fingers, all of said fingers having certain of their adjacent longitudinal edges in the form of arcs and their other edges spaced from each other.

11. A twine holder for use in a tying machine having a pair of spaced apart step by step twine engaging disks; said twine holder comprising a supporting arm having pivot means adjacent one end for pivotally mounting the same and having a plate-like central presser finger extending therefrom and a pair of plate-like fingers mounted in spaced parallel relation to said first presser finger, said pair of fingers having their adjacent longitudinal edges in the form of arcs, and means rigidly mounting said pair of plate-like fingers on said arm in parallel relation to each other and to said central presser finger, the said fingers being completely separated from each other along both longitudinal edges of each finger, whereby to provide open spaces between said fingers and to provide open ends opposite to said arm pivot means.

12. A twine holder for use in a tying machine having a pair of spaced apart step by step twine engaging disks; said twine holder comprising a supporting arm having pivot means adjacent one end for pivotally mounting the same and having an integral plate-like central presser finger extending therefrom and a pair of plate-like fingers mounted in spaced parallel relation to said first presser finger, said pair of fingers having their adjacent longitudinal edges in the form of arcs, and means rigidly mounting said pair of plate-like fingers on said arm in parallel relation to each other and to said central presser finger, the said fingers being completely separated from each other along both longitudinal edges of each finger, whereby to provide open spaces between said fingers, and to provide open ends opposite to said arm pivot means.

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